

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

VIRGINIA LYN ANDERSON,

Defendant and Appellant.

C085262

(Super. Ct. No. 14F3581)

Defendant Virginia Lyn Anderson pleaded no contest to driving without a license (Veh. Code, § 12500, subd. (a)). A jury found defendant guilty of misdemeanor driving under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)), but could not reach a verdict on the felony charge of driving under the influence causing great bodily injury (Veh. Code, § 23153, subd. (e)). The trial court declared a mistrial on the felony count. On retrial, the jury found defendant guilty of the felony driving under the influence charge. Defendant admitted enhancements for personally inflicting great bodily injury and for personally causing the victim to become comatose or suffer

permanent paralysis (Pen. Code, § 12022.7, subds. (a), (b)),<sup>1</sup> and was sentenced to a seven-year state prison term.

On appeal, defendant contends prosecution for the felony driving under the influence with the great bodily injury enhancement was preempted by the more specific statute, vehicular manslaughter while intoxicated without gross negligence (§ 191.5, subd. (b)). We shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

We take the facts of the case from the second trial, where the jury convicted defendant of the crime that is the centerpiece of this appeal.

At around 1:00 p.m. on April 24, 2014, Mikel Murphy was driving northbound on Buenaventura Boulevard near the intersection with Placer Road in Redding.<sup>2</sup> Traffic was pretty heavy at the intersection. Wanting to turn left onto Placer Road, Murphy moved closer to the intersection; a white car drove out of the dirt lot on his left and got into the left-turn lane in front of him. When the white car got to the limit line at the intersection, the light had turned red. The white car nonetheless ran the red light and turned left.

Dede Richards was heading southbound on Buenaventura Boulevard, waiting at the red light at the Placer Road intersection. As she moved forward after the light turned green, a pickup truck followed by a white car turned west onto Placer Road from Buenaventura Boulevard. The white car was less than a car's length behind the pickup

---

<sup>1</sup> Undesignated statutory references are to the Penal Code.

<sup>2</sup> Buenaventura Boulevard runs north/south, with two lanes going south and one lane going north. At the Placer Road intersection, there were left-turn lanes in each direction, allowing the driver to turn east or west onto Placer Road. Placer Road runs east/west, with two lanes going east and one west. On the southwest corner of the intersection is a dirt lot which people use for selling various items.

truck. At the same time, a motorcycle, which had a free lane and a green light, passed Richards on the right.

The motorcycle driver, Haley R. applied the brakes but hit the rear passenger side of the white car, causing her to be thrown off her motorcycle, flip through the air, and hit the pavement, where “she rolled up like a rag doll.” The white car finished the left turn and then pulled over to the shoulder. The driver, defendant, exited the car and walked to the dirt lot from which she initially pulled out.

A doctor and a nurse were among the bystanders who came to Haley’s aid. The doctor determined “she was not breathing and her face was turning blue.” The doctor and nurse removed her helmet and straightened her airway. Haley R. started breathing but she remained unconscious. Emergency personnel arrived and took her to the hospital, where she was diagnosed with a severely traumatic brain injury, brain herniation, a fracture to the base of the skull, and was comatose. In spite of life saving efforts, examinations indicated brain death. She was eventually removed from life support and died. The injuries were consistent with a traffic collision.

Redding Police Officer Darren Hull contacted defendant; she was at the dirt lot, sitting on the edge of a van’s bumper. He noticed she went through periods where she spoke fast, moved rapidly, and would then go into a more lethargic mode. Defendant’s speech was slurred and erratic at times. Also, she would sway side to side while sitting.

Redding Police Officer Bounpon Kongkeoviman conducted a drug recognition evaluation. He found defendant’s eyes were red, watery and bloodshot. Her mouth seemed dry with a saliva strand on the side of her mouth. Defendant appeared unkempt, and her speech was slow, mumbled, and sometimes slurred. She denied drinking or using drugs, but failed several field sobriety tests. An alcohol breath test indicated no alcohol in her system. Asked again whether she had taken any drugs, defendant apologized for lying and admitted using methamphetamine at least twice the day before. Asked if she

was still under the influence, defendant said she was still high and should not be driving. She also admitted to smoking marijuana the night before, taking two hydrocodone pills that morning, and taking the central nervous system depressants, Gabapentin and Neurontin.

Defendant was arrested for driving under the influence and taken to the hospital for a blood draw. While waiting for the blood test, she admitted not looking to see the traffic light before entering the intersection. She slowed down when she entered the intersection because she saw a car driving southbound on Buenaventura Boulevard turning west onto Placer Road in front of her. Defendant accelerated after the car had passed and felt something hit the back of her car. Defendant told the detective that she should not have been driving knowing that she had been taking pain medication, smoking marijuana, and smoking methamphetamine.

Defendant's blood tested positive for amphetamine, methamphetamine, morphine, hydrocodone, and cannabis. The level of hydrocodone was within the therapeutic range and the level of morphine below the therapeutic range. A long-term user of morphine and hydrocodone would not be impaired at the levels of those drugs found in defendant's blood.

An accident reconstruction expert opined that, based on his analysis and witness statements, the collision was caused by defendant entering the intersection after the light had turned red.

The defense presented an accident reconstruction expert, who opined that defendant entered the intersection on a yellow light and was already in the intersection when the light turned red. A defense toxicology expert opined that the blood tests in this case do not support the conclusion that defendant was impaired when she was driving.

## DISCUSSION

Defendant made a pretrial motion to dismiss the driving under the influence causing great bodily injury count with the personal infliction of great bodily injury enhancement, asserting the charge was preempted by the more specific statute, section 191.5, subdivision (b). In opposition to the motion, the prosecutor asserted the victim was in a coma for six days before life support ended and she died. Defendant did not contest this assertion, and the trial court denied the motion. Defendant subsequently renewed the motion, which the trial court denied again. Defendant's petition for writ of mandate was denied by this court on March 24, 2016.

Defendant contends the denial of her motion was erroneous because prosecution for the felony and enhancement for which she was convicted, driving under the influence causing great bodily injury with an enhancement for personally causing the victim to become comatose or suffer permanent paralysis, was preempted by the more specific statute, section 191.5, subdivision (b), vehicular manslaughter while intoxicated without gross negligence. We disagree.

"The preemption doctrine provides that a prosecution under a general criminal statute with a greater punishment is prohibited if the Legislature enacted a specific statute covering the same conduct and intended that the specific statute would apply exclusively to the charged conduct." (*People v. Jones* (2003) 108 Cal.App.4th 455, 463.) This " " "special over the general" " rule" applies in the context of enhancement statutes. (*People v. Weaver* (2007) 149 Cal.App.4th 1301, 1326 (*Weaver*), overruled on other grounds in *People v. Cook* (2015) 60 Cal.4th 922, 924, 939.)

The special statute only preempts the general statute if (1) " " "each element of the 'general' statute corresponds to an element on the face of the 'specific' [*sic*] statute" or [(2)] "it appears from the entire context that a violation of the 'special' statute will necessarily or commonly result in a violation of the 'general' statute." " " (*Weaver*,

*supra*, 149 Cal.App.4th at pp. 1326-1327.) Even if either of these two alternative tests is satisfied, “the special statute will *not* be applied under the preemption doctrine if the Legislature intended the general statute to apply.” (*Id.* at p. 1327.)

Since an enhancement related to the crime is treated like an element of the crime under *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] (see *People v. Seel* (2004) 34 Cal.4th 535, 539, fn. 2), we treat the crime of causing great bodily injury with an enhancement for personally causing the victim to become comatose or suffer permanent paralysis as a single offense for the purpose of preemption analysis.<sup>3</sup>

At the time of defendant’s crimes, Vehicle Code section 23153, subdivision (e), stated: “It is unlawful for a person, while under the influence of any drug, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.” (Stats. 2012, ch. 753, § 5.) A person convicted under Vehicle Code section 23153 “shall be punished by imprisonment in the state prison, or in a county jail for not less than 90 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000)” for the first offense. (Veh. Code, § 23554.)

Section 12022.7, subdivision (b), states in pertinent part: “Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony which causes the victim to become comatose due to brain injury or to suffer paralysis of a permanent nature shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.”

---

<sup>3</sup> Although defendant also admitted an enhancement for personally inflicting great bodily injury (§ 12022.7, subd. (a)), preemption analysis is unnecessary since the trial court stayed execution of sentence pursuant to section 654 for this enhancement.

Section 191.5, subdivision (b), states: “Vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.” The crime “is punishable by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or four years.” (§ 191.5, subd. (c)(2).)

The two statutes do not meet the first part of the preemption test, as the section 12022.7 enhancement applies to a different sort of injury—permanent paralysis or a coma due to brain injury—while an element of section 191.5 is that the victim dies. While some victims covered by section 191.5 will be in a coma or permanently paralyzed before dying, many will not. A defendant who violates Vehicle Code section 23153 and instantly kills the victim can be charged under section 191.5 subdivision (b), but, if charged under Vehicle Code section 23153, the section 12022.7 enhancement will not apply. Accordingly, a violation of section 191.5, subdivision (b), will not commonly result in a violation of Vehicle Code section 23153 with a section 12022.7, subdivision (e) enhancement. Since the second part of the preemption test is also not met, we conclude that section 191.5, subdivision (b), did not preempt charging or convicting defendant of the driving under the influence offense with the great bodily injury enhancement for placing the victim in a coma for six days before she died.

## DISPOSITION

The judgment is affirmed.

\_\_\_\_\_  
s/BUTZ, J.

We concur:

\_\_\_\_\_  
s/RAYE, P. J.

\_\_\_\_\_  
s/BLEASE, J.